No. 4286

United States
Circuit Court of Appeals
For the Ninth Circuit.

HOBBS WALL & COMPANY, a Corporation,
Plaintiff in Error,

vs.

S. PETTERSON,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

H. W. HUTTON, Esq., San Francisco, Calif.,
Attorney for Plaintiff and Appellee.
JONES & DALL, Esqrs., San Francisco, Calif.,
Attorneys for Defendant and Appellant.

In the Superior Court of the State of California, in and for City and County of San Francisco.

No. 139,145.

Dept. No. 15.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

(COMPLAINT.)

Plaintiff complains of the defendants and for cause of action alleges:

I.

That on all of the dates and times herein mentioned, the defendant above named was and now is a corporation organized and existing under and by virtue of the laws of the State of California, and had and now has its office and principal place of business in the city and county of San Francisco, State of California, and on all of the said dates and times, it was the owner of a certain steam vessel flying the flag of and engaged in the mer-

chant service of the United States of America, named the "Crescent City."

II.

That on or about the 27th day of February, 1922, plaintiff was in the employ of said defendant on said "Crescent City," in the capacity of second mate, at the wages of $120.00 per month, and his board and lodging, and on said day said vessel with plaintiff so on board was lying at a place called North Bend in the State of Oregon, she having gone there from the State of California with plaintiff so on board for the purpose of loading a load of lumber to be carried by her with plaintiff as such second mate to the State of California.

III.

That at the time said vessel left the said State of California she was unseaworthy and her appliances were defective, as she had an unused, what is called a block, hanging on her main mast about one hundred and ten feet above her deck, which said block had upon it a hook with which it was suspended by the [1*] said hook being hooked in an eye that was upon a band that went around said mainmast; that to make said block reasonably safe when so suspended it was necessary that there should have been what is called a nosing around the mouth of the hook, but there was no nosing or anything to act as a substitute therefor on the same, and by reason thereof the said block, which weighed in excess of 25 pounds, jarred out of said eye on the day aforesaid and fell down and struck plaintiff

*Page-number appearing at foot of page of original certified Transcript of Record.

upon his right arm below the elbow and at that place badly fractured the bones of his said right arm by reason of which plaintiff was thereupon compelled to undergo surgical treatment and has been under such ever since except for a period of 31 days and is now and for a long time to come will be under such surgical treatment, and he suffered and still and for a long time to come will suffer great physical pain and suffering from his said injuries, but to the permanency thereof he is unable at this time to state.

IV.

That the port in the State of California that said vessel "Crescent City" left for said North Bend was the port of San Pedro, and defendant carelessly and negligently sent her from said San Pedro and operated her with the said block without any nosing on it as aforesaid, the condition of said block being unknown to plaintiff and it being so suspended without any fault on his part as it was the duty of the defendant by and through the master and mate of said vessel to keep vessel and her appliances and parts in order, and not the duty of the plaintiff.

V.

That plaintiff has incurred a liability for surgical attendance and hospital fees in the treatment of his said injury the reasonable value of which is the sum of $374.00, none of which has been [2] paid but which defendant promised to pay.

VI.

That by reason of the premises plaintiff has been

damaged in the sum of ten thousand ($10,000) dollars, none of which has been paid.

WHEREFORE plaintiff prays judgment against the defendant for the sum of ten thousand ($10,000) dollars and costs of this action.

H. W. HUTTON,
Attorney for Plaintiff.

State of California,
City and County of San Francisco,—ss.

S. Petterson, being first duly sworn, deposes and says as follows: I am the plaintiff above named, I have read the foregoing complaint and I know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information or belief, and as to those matters I believe it to be true.

His
S. X PETTERSON.
Mark

Subscribed and sworn to before me this 28th day of August, 1923.

[Seal] JOHN L. MURPHY,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed August 28th, 1923. H. I. Mulcrevy, Clerk. By ————, Deputy Clerk.

[Endorsed]: Filed July 14, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

In the District Court of the United States in and for the Northern District of California, Southern Division.

No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

WRIT OF CERTIORARI.

United States of America,
Northern District of California,—ss.

The President of the United States to the Superior Court of the State of California, in and for the City and County of San Francisco, GREETING:

Being informed that there is now pending before you a suit in which S. Petterson is plaintiff and Hobbs Wall & Company is defendant, numbered 139,145; that said suit was commenced by a summons and complaint in said Superior Court of the State of California, in and for the city and county of San Francisco, and that said suit has not yet been tried, and we being willing for certain reasons, that said cause and the records and papers therein should be certified by said Superior Court and removed unto our District Court of the United States, in and for the Northern District of California, Southern Division, we do hereby command

that you make return, without delay, and within thirty (30) days after service upon you of this writ to said District Court of the United States, as aforesaid, of the records and papers in said cause, so that the said [4] District Court of the United States may act thereon as of right and according to law.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge, in and for the Northern District of California, this 15th day of November, 1923.

[Seal] WALTER B. MALING,
Clerk of the District Court of the United States.
By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed Nov. 15, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

In the District Court of the United States in and for the Northern District of California, Southern Division.

No. 16,947.

S. PETTERSON,
Plaintiff,
vs.
HOBBS WALL & COMPANY,
Defendant.

ANSWER TO COMPLAINT.

Comes now Hobbs Wall & Company, a corporation, defendant in the above-entitled matter, and for answer to plaintiff's complaint on file herein, admits, alleges and denies, as follows:

I.

Defendant admits all the allegations contained in paragraph I of said complaint and defendant further admits all the allegations in paragraph II of said complaint, except that defendant alleges that said date was the 27th day of February, 1923, and not the 27th day of February, 1922.

II.

Defendant denies that at the time said steam vessel "Crescent City" left the State of California, as alleged in said complaint, or at any other time or at all, said vessel was unseaworthy and/or her appliances were defective and/or that she had an unused block hanging on her mainmast about one hundred and ten feet above her deck, or at any other place on said mast, and in this behalf defendant alleges that said block was used for the signal halyard. Defendant further denies that to make said block reasonably safe when suspended, as alleged in said complaint, or safe at all, it was necessary that there should [6] have been what is called a "nosing" around the mouth of the hook with which such block was suspended as set forth in said complaint and defendant denies that there was no nosing and /or anything to act as a substitute therefor on the same, and in this connection

defendant alleges that there was at the time plaintiff received the injury alleged in said complaint a good and sufficient nosing around the mouth of said hook. Defendant further denies that by reason thereof, or by reason of any of the matters set forth in said complaint, or by reason of any negligence on the part of defendant, or by reason of any unseaworthiness of said vessel "Crescent City," or by reason of the lack of any proper appliances of facilities or furnishings or tackle on said vessel, the said block jarred out of the eye in which said hook was hooked, as set forth in said complaint, on said date, and/or fell down and/or struck plaintiff upon his right arm below the elbow, or upon any other part of his body, and at that place or at any other place or at all, badly or at all fractured the bones or any thereof of his right arm, and defendant denies that by reason thereof, or by reason of any matters set forth in said complaint, plaintiff was compelled to undergo surgical treatment and/or has been under such ever since, except for a period of thirty-one days, and/or is now and/or for a long time to come will be, under such surgical treatment; and defendant denies that he suffered and/or still and/or for a long time to come will suffer great or any physical pain and/or suffering from his said injuries, or at all.

III.

Defendant denies that it carelessly and/or negligently sent said vessel "Crescent City" from San Pedro or to or from any other place and/or oper-

ated her with said block without any nosing on it, as alleged in said complaint, and in this [7] connection defendant alleges that at the time defendant sent said vessel from San Pedro, and at all times thereafter, and at the time plaintiff received said injury, said block had a good and sufficient nosing on it.

Defendant further denies that the condition of said block was unknown to plaintiff and denies that said block was suspended without any fault on plaintiff's part, and denies that it was the duty of defendant to keep said vessel and her appliances and/or parts in order by and/or through the master and mate of said vessel only, and denies that it was not the duty of plaintiff to do so, and in this connection defendant alleges that it was also the duty of plaintiff, as second mate of said vessel, to see that said vessel and her appliances and parts were in order.

IV.

Defendant denies that plaintiff has incurred a liability for surgical attendance and/or hospital fees, or for anything else, in the treatment of the injury alleged in said complaint, or at all, the reasonable, or any value of which is the sum of three hundred and seventy-four dollars ($374), or any sum at all, and defendant denies that defendant promised to pay said sum or any part thereof.

V.

Defendant denies that by reason of the premises, or by reason of any of the matters set forth in said complaint, or otherwise or at all, plaintiff has

been damaged in the sum of ten thousand dollars ($10,000.00) or in any other sum whatsoever. [8]

And for a further, separate and distinct answer to said complaint, this defendant alleges:

I.

That on said date plaintiff so recklessly, carelessly and negligently operated the winch on said vessel "Crescent City" that plaintiff caused the donkey fall to get tangled around the midship guy, whereupon plaintiff, in order to clear the donkey fall from the midship guy, by slacking them up and heaving them tight again, recklessly, carelessly and negligently caused the mast on which said block was hanging to be jarred too strongly and that said block jarred out of said eye, as alleged in said complaint, and plaintiff received the injury alleged in said complaint, solely by reason of and as the direct and proximate consequence and result of said recklessness, carelessness and negligence on the part of plaintiff in operating said winch and causing said mast to be jarred too strongly, all without any fault or omission on the part of the defendant.

And for a further, separate and distinct answer to said complaint, this defendant alleges—

I.

This defendant alleges that at the time plaintiff received said injury said vessel "Crescent City" was about to sail from said port of North Bend and the loading of the cargo on said vessel was finished and completed and it was necessary simply to lower the booms to the deck from the mast, and that the

usual, customary and proper method so to lower the booms is simply to slacken the rope by which said booms are held and allow them to come down and that it is not necessary, usual [9] or proper to use the winch for that purpose and that plaintiff was not ordered or required by defendant, or by the master or by the mate of said vessel, to use said winch in lowering said booms and that plaintiff chose to use said winch as aforesaid as a whim or caprice of his own and at his peril, and in so doing was not in the course of his employment on said vessel, or otherwise, and that the injury which plaintiff received, as alleged in said complaint, was received by plaintiff solely as a result of said whim or caprice of plaintiff and was not received by plaintiff in the course of his employment on said vessel, or otherwise.

WHEREFORE, defendant prays that plaintiff may take nothing by his complaint on file herein and that defendant may be hence dismissed with its costs of suit herein.

JONES & DALL,

Attorneys for Defendant Hobbs Wall & Company, a Corporation. [10]

State of California,
City and County of San Francisco,—ss.

W. J. Hotchkiss, being first duly sworn, deposes and says: That he is an officer, to wit, the president of Hobbs Wall & Company, a corporation, the defendant in the foregoing answer, and makes this verification on behalf of said corporation; that he has read the foregoing answer and knows the con-

tents thereof and that the same is true of his own knowledge, except as to the matters therein stated on information or belief and as to those matters he believes it to be true.

W. J. HOTCHKISS.

Subscribed and sworn to before me this 14th day of February, 1924.

[Seal] H. L. LANFAR,
Notary Public.

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Feb. 14, 1924. Walter B. Maling, Clerk. [10½]

In the District Court of the United States in and for the Northern District of California, Southern Division.

No. 16947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

STIPULATION WAIVING JURY.

It is hereby stipulated between the respective parties hereto that a jury be and the same is hereby waived in the above-entitled matter.

H. W. HUTTON,
Attorney for Plaintiff,
JONES & DALL,
Attorneys for Defendant.

[Endorsed]: Filed March 11, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [11]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

JUDGMENT.

This cause having come on regularly for trial upon the 17th day of March, 1924, before the Court sitting without a jury, a trial by jury having been especially waived by written stipulation filed: H. W. Hutton, Esq., appearing as attorney for plaintiff and Messrs. Jones and Dall, appearing as attorneys for defendant; and the trial having been proceeded with and oral documentary evidence upon behalf of the respective parties having been introduced and closed and the cause, after arguments by the attorneys, having been submitted to the Court for consideration and decision, and the Court, after due deliberation, having filed its decision and ordered that judgment be entered in favor of plaintiff in the sum of $2,850.00 and for cost.

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that S. Petterson, plaintiff, do have and recover of and from Hobbs Wall & Company, defendant, the sum of two thousand eight hundred fifty and 00/100 ($2,850.00), together with its costs herein expended taxed at $——.

Judgment entered April 1, 1924.

WALTER B. MALING,
Clerk. [12]

United States District Court, California.

No. 16,947.

PETTERSON

vs.

HOBBS ETC. & CO.

(OPINION OF COURT.)

Plaintiff, second mate of defendant's ship, alleges injury aboard, caused by the vessel's unseaworthiness and her negligent maintenance.

The defenses are denials of the causes alleged and allegation that the injury was wholly caused by plaintiff's negligence. The evidence is that a block suspended by a hook into an eye welded to a band at the top of the mainmast fell and struck plaintiff. He testifies the hook bore no evidences that it had ever been supplied with the usual rope or wire guard or keeper. The captain testifies that the hook did.

The circumstances related to the fall are that the hook had there hung 100 feet above deck for more

than two years, without any evidence of renewal or inspection; that the guard or keeper, if of rope, will last about two years; that the block had been used but once or twice during plaintiff's seven months' service; was 20 feet above all ratline or access save by shinning up the mast; that it was the duty of the first mate to inspect and repair, tho plaintiff had "authority" to remedy any like defects by him perceived; that he had not been up to the block; that for 3 days the vessel loaded lumber by means of cargo booms; two on the mainmast operated by hand and power winch. That, loading completed, plaintiff proceeded to lower and stow the booms; that the cargo hook of the mainmast booms caught on a guy between the booms and plaintiff vigorously, if not violently, worked the winch forward and reverse to dislodge the hook; [13] that this accomplished, the booms were hand-lowered, and when half accomplished the block fell, struck and injured the plaintiff.

It is obvious that any roll or careen of the ship will be magnified in sway or sweep of the mast tops. Hence, the necessity to supply and maintain guards or keepers on block hooks there suspended. This rolling or careening of the ship is ordinary, usual and anticipated. It is also clear that if this hook ever had a guard or keeper, it weathered and broke away at the time of fall or prior thereto. The roll and sweep of loading may have dislodged the guard or keeper, or the jar and jerk consequent upon plaintiff's manipulation of the winch may be responsible. But there is no evidence that would warrant

a finding that plaintiff's said conduct was other than usual, ordinary, necessary, reasonable; no evidence it was negligence, and none that it wholly caused the block to fall, that is, without regard to guard or keeper, absent or defective.

In these circumstances, although it is probable plaintiff's conduct or acts caused the hook to escape the eye-bolt, it precipitated the fall. Such conduct or acts, though contributing to the block's fall, in legal contemplation are not the *cause* of the block's fall but only a *condition* thereof.

The proximate cause was the absence or weakness of the guard or keeper, due to defendant's failure to discharge their duty, whether to make seaworthy with reasonable diligence to maintain.

And it is so found, if necessary to appeal to *res ipsa loquitens* that the principle applies to master and servant actions has been long since declared by this Circuit Court of Appeals. Citation not at hand. [14]

In respect to damages, plaintiff's right radius was broken, slowly repaired, required an operation; shortening it three-eighths of an inch, involving pain, lost time and as much impairment of the arm as is consequent upon that amount of shortening in an arm otherwise perfect in repair.

For lost time in the circumstances it is believed and found that $1300.00 are just compensation.

For surgical treatment, $300.00, likewise.

The evidence in respect to impairment of the arm is very general and unsatisfactory. Plaintiff's medical testimony (and defendants introduced none) is

that the arm is some "out of line," curtails strength and rotation and though the muscles will probably accommodate to the shortening, though the latter "will interfere in some kinds of manual labor." Plaintiff's vocation is supervision rather than manual labor.

In this state of evidence, having in mind the principles of compensatory damages and the circumstances of the case, it is believed and found that $1250.00 will fairly compensate the impairment and is just to both parties.

Cost to plaintiff. Judgment accordingly.

April 1, 1924.

BOURQUIN,
Judge.

[Endorsed]: Filed April 1, 1924. Walter B. Maling, Clerk. [15]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

AT LAW—No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

STIPULATION AND ORDER EXTENDING TIME TO AND INCLUDING MAY 29, 1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the defendant Hobbs Wall & Company, a corporation, may have to and including the 29th day of May, 1924, within which to make, serve and file its bill of exceptions on appeal from the judgment rendered herein on the 1st day of April, 1924, against said defendant and in favor of plaintiff.

Dated May 20, 1924.

H. W. HUTTON,
Attorney for Plaintiff.
JONES & DALL,
Attorneys for Defendant.

[Endorsed]: Filed May 21, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [16]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

AT LAW—No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

STIPULATION AND ORDER EXTENDING TIME TO AND INCLUDING MAY 21, 1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the defendant Hobbs Wall & Company, a corporation, may have to and including the 21st day of May, 1924, within which to make, serve and file its bill of exceptions on appeal from the judgment rendered herein on the 1st day of April, 1924, against said defendant and in favor of plaintiff.

Dated May 3d, 1924.

H. W. HUTTON,
Attorney for Plaintiff.
JONES & DALL,
Attorneys for Defendant.

In accordance with the foregoing it is so ordered. May 5, 1924.

FRANK H. KERRIGAN,
District Judge.

[Endorsed]: Filed May 5, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

AT LAW—No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

STIPULATION AND ORDER EXTENDING TIME TO AND INCLUDING JUNE 9, 1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the defendant Hobbs Wall and Company, a corporation, may have to and including the 9th day of June, 1924, within which to make, serve and file its bill of exceptions on appeal from the judgment rendered herein on the 1st day of April, 1924, against said defendant and in favor of plaintiff.

Dated May 28th, 1924.

H. W. HUTTON,
Attorney for Plaintiff.
JONES & DALL,
Attorneys for Defendant.

In accordance with the foregoing it is so ordered.

PARTRIDGE,
Judge.

[Endorsed]: Filed May 28th, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [18]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

AT LAW—No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

STIPULATION AND ORDER EXTENDING TIME TO AND INCLUDING JUNE 30, 1924, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the defendant Hobbs Wall & Company, a corporation, may have to and including the 30th day of June, 1924, within which to make, serve and file its bill of exceptions on appeal from the judgment rendered herein on the 1st day of April, 1924, against said defendant and in favor of plaintiff.

Dated June 9th, 1924.

H. W. HUTTON,
Attorney for Plaintiff.
JONES & DALL,
Attorneys for Defendant.

In accordance with the foregoing it is so ordered.

KERRIGAN,
District Judge.

[Endorsed]: Filed June 9, 1924. Walter B. Maling, Clerk. [19]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

AT LAW—No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

DEFENDANT'S BILL OF EXCEPTIONS.

This action came on regularly for trial before the above-entitled court, without a jury on the 27th day of March, 1924. H. W. Hutton, Esq., appearing as attorney for plaintiff, and Messrs. Jones & Dall, by C. G. Dall, Esquire, appearing as attorneys for the defendant, and the following proceedings and none other were had.

Plaintiff thereupon called the following witnesses and offered the following testimony, to wit:

TESTIMONY OF JOSEPH F. POHEIM, FOR PLAINTIFF.

JOSEPH F. POHEIM, called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination.

I am a physician and surgeon practicing in San Francisco since 1898; I am a graduate of one university and have studied in other universities on the continent, Berlin and Vienna.

I know Petterson, the plaintiff in this case. He came under my care about May 11, 1923. I made an examination of him at that time and had some X-rays taken of his arm. He had a cast on his arm at that time and told me that it was being treated for a fracture that had been received up north. The X-rays showed a complete fracture of the radius, a fracture of the radius bone.

Two of these X-rays were thereupon offered and received [20] in evidence and marked Plaintiff's Exhibits Nos. 1 and 2.

At the time he came to me the fracture was between eight and ten weeks old. When he first came to me I could not definitely say what the condition of the fracture was, except that I noticed that the union of the bone was out of line at that time; he had had a cast put on it up north and then he had come down here and gone to the Marine Hospital and had another cast put on, and the patient, as I understand it, had complained that nothing further had been done, and he finally came

(Testimony of Joseph F. Poheim.)

to me, with the consent of Mr. Meyer, of Hobbs, Wall & Co. I then took over the case, having communicated with Mr. Meyer, first asking him if he was satisfied I should take over the case, and he told me to go ahead. I then removed the cast, after taking an X-ray, and in that the bones were in fair condition apparently, from the picture, and had a leather cast made, I might call it, a leather bandage made to hold the arm in position, and to free him from the heavy cast. This was put on the patient's arm for about, I should judge, two or three weeks, and after three weeks in the usual course of events, I concluded to attempt to make passive motion of the arm.

When he came to me I could not tell whether there was any union. The picture showed there was possible union, but you could not tell until you had moved the arm whether there was a complete union, and the trouble with it afterwards was only discovered through, I might say, a fluke. It was afterwards discovered there was a fibrous union. As I started passive motion, the patient felt a click between the two bones, as he thought; I did not believe that was possible, and thought probably the bone was healing, but examined it, and I felt the click. As soon as I felt the click I immediately suspected the possibility of only a fibrous union, and not a bony union, so that the two ends were [21] not connected by a solid bony formation. I immediately, therefore, took him into the X-ray room and put what is known as a fluoroscope on

(Testimony of Joseph F. Poheim.)

him, did not take a picture, and then attempted to make the motion in the direction that I felt the click, and in making the motion in the direction that I felt the click, and looked through the fluoroscope, I then discovered what the real trouble was, and the picture will show what that was.

Here is the picture of the bone which was taken after I had discovered what was the trouble with the bone. It moved completely out of line which you can notice from the picture. The picture was taken 8–1–23. The trouble was that the union of the bone was simply a fibrous union. The bone was turned one way; it was completely out of line. The two ends were partially in contact, but it was a fibrous union, not a bone union. In other words, they were moving on themselves, a false joint.

This X-ray was thereupon offered and received in evidence and marked Plaintiff's Exhibit No. 3.

When I discovered what was the trouble with the man's arm, I reported the matter back to Mr. Meyer of Hobbs, Wall, & Company. I told him that the bone never could be treated in any other way with the exception of operating on it and making a recision, cut through the arm and bring them tobether, in close apposition. I suggested wiring them.

Mr. Meyer called in a Dr. Ryan, who looked at the arm and suggested to him that the arm be put again in a cast to see if it might not be possible to get a union. Mr. Meyer wrote me and told me of what Dr. Ryan had suggested, and I then advised

(Testimony of Joseph F. Poheim.)

Mr. Petterson to follow out Mr. Meyer and Dr. Ryan's suggestion, and that there was no reason why we should not try it. Petterson finally consented to put it in a cast again, which I did, and he [22] went to sea and came back in thirty days and I again removed the cast and took a fluoroscope picture of it again and found that the condition had not been altered; that it was exactly the same as it was before, and I told him then that my opinion still held; that the only thing to do with it was to operate on the arm.

I then advised Captain Petterson again to be operated on, and finally, about the 15th or 16th of August, I operated on him at the Morton Hospital. He was under an anaesthetic for about an hour and a half. The nature of the operation was that I cut down on the bone, removed the fibrous tissue and found the condition exactly as it was in the X-ray. I freshened and leveled off the ends, thereby necessarily shortening them, and brought the freshened ends together by wire. It is a very beautiful result. The wires are in his arm now. This is a picture showing the condition after the operation.

This X-ray was thereupon offered and received in evidence.

He has a perfect arm to-day, but it is short on one side. Necessarily the bringing together of the bone from the cutting of the end would and naturally brought about a shortening. That has some effect on the use of the arm, that is, it puts

(Testimony of Joseph F. Poheim.)

the whole hand and arm out of line, and necessarily will curtail the strength in the action of it. It will also decrease the power of the hand. Probably that is permanent. In my judgment his right arm will never be normal on account of its being out of line. The operation which I made was the only possible way of getting the bone to form a union. My charge for the operation and subsequent treatment for practically eight weeks was $300.00. I also was paid $175.00 for the treatment of Petterson up to the time of the operation. This was paid to me by Hobbs, Wall & Company. The [23] $300.00 charge was a separate item for the operation and subsequent treatment.

It was thereupon agreed that Hobbs, Wall & Company had authorized Dr. Poheim to go ahead and perform the operation which was performed.

The treatment which I gave to Mr. Petterson occasioned him pain and physical suffering. Going around with his arm in a plaster cast caused him suffering at times and caused him inconvenience all the time.

Cross-examination.

The charge of $300.00 for the operation is a reasonable charge, and I did not have in mind that possibly the corporation, defendant in this case, might be paying it.

After the operation I saw Petterson the first ten days twice a day. The charge is not only reasonable, but I think it is cheap.

When the bone had to be cut naturally it short-

(Testimony of Joseph F. Poheim.)

ened; every muscle that he pulls does not pull in a straight line, but pulls on an angle. In other words, the whole arm is out of line from what nature had intended it to be. The shortness of the radius is caused by the removal of the bone. There is easily three-eighths of an inch that was removed and that is the quantity by which the radius is shorter than it was in its former condition. It distorts the whole forearm to that extent.

As far as my medical teachings are concerned, it is possible and probable that these muscles would accommodate themselves to that condition, that nature will provide for drawing up these muscles so that the motion will be rectified but the fact that all of these tendons coming from the muscles are bound [24] in by ligaments, and that these ligaments have not been disturbed, and where ordinarily the finger, when it would close, would work straight through, being off this way, just a little on an angle this way and then down, that will unquestionably interfere with the action to the same extent that it would in a straight line; in other words, if you are pulling a cord from an angle you are not going to have the same pull as you are in a straight line, with no resistance. In order to accomplish the same result you will have to use more muscular force than before, but you have no right to expect in the ordinary run that you are going to get more muscle; you have a tendency to have atrophy through a long lack of use of the arm. The fact that he requires more strain to accomplish

(Testimony of Joseph F. Poheim.)

a certain result will develop the muscle, but it will not develop it more than nature will permit, and he still has the off-line no matter how well his muscle develops. It is not true that an over-development of the muscle will permit him to have the same normal ordinary motion that he had before. He probably is fully developed to-day, a very powerful man who has all the development he will ever get; looking at his arm, he is a man that had his muscles developed to the fullest possible extent to-day, and he is never going to get an increase as a result of it, but a decrease.

He can accomplish the normal motion of that hand by imposing a greater effort, if he has power to do it. The only thing he does lose are the extraordinarily severe exertions that he might desire to make with that hand; the ordinary motions he could make.

Q. You stated he had a perfect arm to-day, in reply to counsel?

A. Yes, there are probably few like it, as a result [25] of the operation.

I could not tell whether the fact that the bones, when I saw them in the X-ray, were out of line was due to improper treatment he had previously received after the accident. If he had been brought to me immediately after the accident, I believe I could have achieved a bony union and avoided the necessity of this operation, but it is only theory; no man could swear to it; I believe I could have done it because I never had a failure. I never had a

(Testimony of Joseph F. Poheim.)

fibrous union in practice. A fibrous union is something which the doctors seek to avoid; it is an unfortunate occurrence, and we do not understand why it happens; it is unusual, it seldom happens.

Normally you can take an ordinary bone and you will have the beginning of a proper union in two weeks. I don't think there ever was a bony union before the operation, because when we went in we found a soft fibrous union. We had it in the absolute anatomical specimen.

Redirect Examination.

When he came to me it was still in a cast, and he made the complaint that he had been up in Seattle and came down here. Oftentimes we attempted, rather than to disturbe the union again, to take our chances that the union will go on as it is; in other words, it is always a good idea, even in medicine, to not try to do too much for patients; you may bring on much more trouble than you originally looked for, and so the theory was, here, and also I believe at the Marine Hospital they took the same view, that if we could get a union we will first try it with the condition of the bone as it was before attempting to go to the major operation, which is at all times a very dangerous thing, with the possibility of losing an arm. [26]

Q. In the condition of his arm, would it be likely to interfere with his performance of manual labor?

A. To what extent, of course, is a question, but unquestionably it is not as strong as it was before,

(Testimony of Joseph F. Poheim.)

but I will say this, the man has some strength in his arm and hand; he is not a cripple.

Q. It is not normal?

A. It is not normal; no.

Q. The fact then that it is not normal, then would that not be likely to interfere with his performance of manual labor?

A. Yes, certain kinds of manual labor.

TESTIMONY OF R. E. HAGGARD, FOR PLAINTIFF.

R. E. HAGGARD, called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination.

I hold with the Industrial Accident Commission the position of superintendent of permanent disability, rate department, and have been such since February, 1919. As such I am called upon to examine people who have received injuries. We have a gripping machine, called a dynamometer, for testing the strength of arms and hands. The Industrial Accident Commission has a regular schedule, with supplemental rules and notes used for fixing the percentage of permanent partial disability.

Q. This man Petterson, the plaintiff in this case, has he ever been to your place to be examined, to have his arm examined by you?

Mr. DALL.—If your Honor please, we interpose the objection on the ground it is immaterial, irrelevant and incompetent. The workmen's com-

(Testimony of R. E. Haggard.)

pensation law of the State of California does not apply to this injury. [27]

Mr. HUTTON.—I am only trying, if your Honor please, to show just the character of this man's injury from what this witness observed, in addition to what the doctor testified.

The COURT.—I will hear it. If not competent or material the Court will give it no consideration in making up its decision. The objection will be overruled for the sake of the record and an exception noted.

EXCEPTION No. 1.

Mr. HUTTON.—Q. He has been to you, has he not? A. I saw him yesterday morning.

Q. You saw him before that, too, did you?

A. I have no definite recollection.

Q. What test did you put his arm and hand under yesterday, or did you put it under any test?

Mr. DALL.—One moment, may my objection be considered as going to all of this line of examination?

The COURT.—Yes, all of this character of testimony, with an exception noted.

EXCEPTION No. 2.

A. I tested him out on the gripping machine, to find out what the grasp in the injured hand was in relation to the grasp and power in the uninjured hand.

Mr. HUTTON.—Q. Did you find any difference in the two hands.

A. I found that on the injured hand the grasping

(Testimony of R. E. Haggard.)

power tested 50 pounds; in the uninjured hand 140 pounds.

Q. Did you observe the alignment of his arm?

A. I did not; no.

Q. Did you make any physical examination other than that of his hand and arm? [28]

A. The only examination I made was with regard to the grasping power.

Q. Is that the only examination you made with the gripping machine? A. Yes.

Q. Did you make a full and careful examination of it? A. Of the arm?

Q. Yes. Did you do anything further than the test with the gripping machine? A. No.

Cross-examination.

That machine is a mechanical arrangement that tests the power of the grip. It registers the pressure of the grip that is exerted against it. It depends of course, entirely on the force that is put into the grip. There is no way of ascertaining whether that is the full extent of the grip or whether it is only partial. You have to rely upon the good faith of the subject and your experience in testing out to determine whether in your own mind the man is putting effort into it. It is entirely possible that this man would exert a pressure of 50 pounds with his right hand, whereas if he had been anxious to register more highly he could have done so by exerting a greater pressure.

TESTIMONY OF S. PETTERSON, IN HIS OWN BEHALF.

S. PETTERSON, called as witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination.

I am the plaintiff in this case. I am forty-seven years of age and have been going to sea since I was fourteen. I was on the steamer "Crescent City" in 1922 and 1923 for a period of about seven months. I was second officer on her. My salary first was $120.00 per month, and in a few months I got raised to [29] $130.00 per month. This included board and lodging.

I was on her up in North Bend in February, 1923. We were loading lumber on her to take to San Pedro.

The officer above me is the first mate and above him the captain. We didn't carry any third mate. There were eight sailors besides engineers and firemen.

After the vessel had been loaded with lumber the first mate went ashore and he told me to make the ship ready for sea. In making the ship ready for sea I had to lower the cargo booms of which there were four. They were situated on masts. There were two masts and two booms on each mast. The captain was ashore, too.

We lowered the forward gear down first. Then we started to lower the gear on the mainmast. The booms were about 46 feet long, I believe. One

(Testimony of S. Petterson.)

end of the boom sets in a band around the mast; the other end is suspended with halyards. The halyards are suspended from blocks flying from the masts. When you want to lower the booms the first thing you do is to go to the halyards, which is what I did on this occasion. The men handled the halyards. There were four men on each side. While we were working that a block come down—came down from a little below the truck of the mast. The mast is somewhere around 110 feet high. The block had nothing to do with the booms. I don't know what the block was there for. I believe that it had been there when the ship was carrying wireless before, to have wireless gear hoisted up there, I believe; that is the way it looked to me. The block was not used for any purpose while I was on the ship except it was used once for painting the mast. In order to scale the mast there are what are called ratlins, which are steps. The ratlins go to the first shoulder of the mast. The block was about 20 feet above these ratlins There was no way of getting up [30] to where the block was except by shinning up the mast.

The block which came down struck me on my right lower arm. It was a 6-inch block, like the one you are showing me. I think it weighs around 4½ or 5 pounds. The block struck me about the middle of the wrist. This block was hooked in an eye-bolt on a band around the mast. It was a block in every way like the one now being shown to me.

(Testimony of S. Petterson.)

Thereupon the block which plaintiff's counsel had shown to the witness was offered and received in evidence.

On board ships in order to prevent blocks from jarring out they are supposed to put a nosing around them. That is a nosing that goes around the end of the block and this way. (Witness illustrating how nosing goes around end of block.) It can *never*. *That* is commonly done when they have blocks hanging up at any height. *come unhooked then*. The purpose of the nosing is to prevent the block from unhooking.

Q. Was there any nosing on the block when it came down and struck you? You say you picked it up. A. Yes, I did.

Q. Was there any indication on it as to whether there was any nosing on it or not?

A. No, I never knew there was any nosing on it.

Q. There was not any? A. No.

Q. Could you tell by looking at it at that time whether there had been any nosing on it?

A. It always shows.

Q. I ask you whether you could see, yes, or no?

A. Yes.

Q. How could you tell?

A. Because it shows a mark on the neck of the block [31] after the block has been painted.

Q. You say there had not been any nosing on that block? A. No.

The mate was not on board when it happened. He was aboard about ten or fifteen minutes after-

(Testimony of S. Petterson.)

wards, something like that. The booms were suspended by falls to the mast. These falls were on the mast about 20 or 25 feet below where this block was hung, something like that.

The block broke the bone in my arm. My arm started to swell up. When the captain came on board he gave me a hospital receipt to go up and see the doctor in the hospital in North Bend, which I did. They examined my arm and took an X-ray and told me to stay there. I stayed there for sixteen days; then I came down to San Francisco on the steam schooner "Mary Hanify." Then I went to the Marine Hospital, 14th Avenue and Lake Street, San Francisco. My arm was in a plaster cast. They took the cast off and examined my arm and put the splint on it on the inside. I went back there the next day and then they kept me in the hospital for a little less than a month. Then I became what they called an outside patient at the Marine Hospital and reported once or twice a week. In the meantime I was living at a place where I used to room. My arm did not get better; I complained to Mr. Meyer of Hobbs, Wall & Company about it; he told me to go to a private doctor, and so I went to Dr. Poheim. When Dr. Poheim said I had to have my arm operated on Mr. Meyer sent me to another doctor. He told me to prevent the operation, to have the arm put in a cast for thirty days, which I did. Then the arm got better. During that month I worked on board the "Crescent City"; I stood a watch; all I had to do was stand

(Testimony of S. Petterson.)

up and look out for the steering-gear. I also helped along as much as I could in port with one arm. That was in July. Then in July when I came back I went up [32] to the doctor's and he found the arm in the same condition as it was before he put the cast on it, and Mr. Meyer told me to go to Dr. Ryan again and see what he said. He told me the same thing, and he got a report, and sent it down to Hobbs Wall that it was absolutely necessary to have the arm operated on. I was operated on and was first able to go to work again on the 20th day of February, 1924, eleven months and twenty days after the accident. I worked one month in the interim.

My arm does affect me now, because I can't do the proper work I should do; I have not got the strength in it; I cannot turn it properly; I can't turn it over this way unless I hold it this way, and when I hold it that way, then I can turn it a little; if I have it this way I can't turn it any more than this. I am right-handed. I went to work on the 20th of February on the "Sea Foam." My arm down in the wrist affected me in the performance of my work, because the bone was thrown out a whole lot right here, being crooked.

I was up in the Industrial Accident Commission yesterday. When I tried those tests on that gripping machine apparatus I did the best I could; he tried me twice.

On board a vessel like the "Crescent City" the first mate inspects the different parts of it and takes care of the overhauling; that is what happens on all

(Testimony of S. Petterson.)

ships. Any repairing always belongs to the owners. As to repairing gears and so on, the first mate does that. The second mate on board a vessel does as the first mate and captain tell him to do; he is supposed to report if he sees anything wrong, or anything like that, which I did report, but the mate is the man that makes inspections and takes care of the general gear of the vessel.

When I came out of the Marine Hospital I lived at 366 Clipper Street; my board and lodging cost me about $3.00 a day. I left the Marine Hospital about the 19th day of April, 1923. [33] From that time up to the time I went to work in February, 1924, I paid for my own board, except for the one month that I worked with the plaster cast on my arm. I suffered pain from the injury; I was in the Marine Hospital with 30 pounds of weight hung on my arm for seventeen days.

I had never been up to where the block was on the mast; there was a block on the foremast, but not a block like this. It is not usual to have a block like that hanging on the foremast.

Cross-examination.

The block which fell on my arm was not on the foremast—it was on the mainmast. This block was hanging on the mainmast when I came aboard the ship; I had seen it. The block had been used for painting the mast.

Q. Did you observe whether it had a nosing on it or not? A. No.

(Testimony of S. Petterson.)

Q. You said that it was the duty of the first mate to keep the gear in repair. Do you call such a simple matter as tying a string around a hook a repair?

A. It is supposed to be done with wire, not with string, but with wire.

Q. Is it not customary to use a line? A. No.

Q. What they call yarn?

A. What they call rope yarn, yes.

Mr. HUTTON.—Do you mean rope yarn and wire, both? A. Yes.

Q. You had never observed that the nosing was missing from that block, had you? A. No.

Q. If you had you would have had authority to have it restored, would you not?

A. I would. The captain of the "Mary Hanify" gave me free passage down; I did not draw any wages on that trip, but I did get paid for some work after I got into San Pedro. I also did a month's work on the "Crescent City" which I got paid for at the rate of $130.00 per month.

Besides standing watch, the second officer navigates the ship, that is takes the bearings, reads the logs, lays out positions, etc. [34]

My work is really not manual work; it is superintending the work of the sailors.

Q. Did you ever observe that this block had been used for a signal halyard? A. Yes.

Q. On the "Crescent City," this particular block?

A. They used it once laying in "Crescent City"; I

(Testimony of S. Petterson.)

do believe we were laying in "Crescent City" when the captain wanted to dress the ship with all flags.

Q. On that day you did use it? A. Yes.

Q. Another time you used it for painting the mast? A. Yes.

Q. You said that after the accident you picked the block up? A. Yes.

Q. What did you do with the block?

A. I laid it on the rail alongside of the winch.

Q. Did you look at it to see whether it showed the signs of nosing, or not?

A. I did not look at it in particular for that. I picked it up and looked at it, and I says to myself, "There should have been a nosing around that block."

Q. You said that to yourself? A. Yes.

Q. You did not say that to anybody else?

A. No.

Q. If there had been a nosing around that block you could have observed it by looking at it, could you? A. Yes. [35]

Q. That is, there would be marks on the hook and on the flanges, here, would there not? A. Yes.

Q. That is, marks where the cord or this rope yarn would have been wrapped around? A. Yes.

Q. Do you recognize that, Mr. Petterson, as the block which struck you?

A. I could not swear if it was the same block; it was a block like that.

Q. Very similar to that?

(Testimony of S. Petterson.)

A. Something like this.

Q. But you cannot identify that as the block that struck you?

A. No, I could not swear to it.

Mr. DALL.—I ask that this be marked at this time for identification as Defendant's Exhibit No. 8.

Q. Now, looking at this block, and assuming for the question that that is the block that struck you, can you observe any marks of a nosing having been on that block?

A. There is a mark there and a mark here.

Q. Where the nosing would have been wrapped around?

A. Yes; it might be that there has been such a thing as a nosing on that block and that nosing has been torn out by hanging up there and swinging.

Q. That is possible, that the nosing could tear out?

A. Yes, but it is supposed to be looked after. When this accident occurred we were lying at North Bend, just having completed the loading of the vessel. We had been at North Bend three or four days, having come up from San Pedro. We had fine weather coming up from San Pedro, I believe; maybe it [36] was a little rough; I have no recollection as to the weather on that trip.

The two booms which attach to this mast are used for the purpose of loading cargoes of lumber. The load is hoisted by drawing on a cable which runs from the winch to the boom, out the boom and through a block and down to below. In that process of loading the steam winch is used and it results in

(Testimony of S. Petterson.)

shaking the mast of the vessel more or less. With a heavy load there is a very severe shaking of the mast. At the time of the accident this process of loading had been going on for three or four days.

The "Crescent City" carries somewhere around 500,000 or 600,000 feet of lumber. Half of that cargo is handled by the mainmast boom.

There is a separate winch for each mast. I operated the winch to draw the line up to get the hook up in the air and out of the way. Very often a hook becomes entangled with the midship guy that holds the two booms together. I don't remember that on this occasion when I hoisted the hook it became entangled with the midship guy. If it had become entangled that would not have anything to do with lowering the booms. I did not use the winch in an effort to jerk the lines loose. I used the winch to steady the booms. You are not supposed to shake the hook loose. It is not a fact that at this time I tried to shake the hook loose. I used the winch to heave the cargo hook up. * * * We always used the winch to take the hook out of the way. After I had done that I did not do anything with the winch; I did not touch the winch. It was not just after I had run this winch that the block came down and struck me on the forearm, because I am used to running winches. I was even heaving cargo when the winch-driver quit. I took his place until another man came down, heaving cargo in and out. I am used to these winches.

(Testimony of S. Petterson.)

Maybe I remember a man named Delquist, who was a member of the crew. I don't hardly know the names of these men. I remember some sailor said he wanted to go aloft and I told him, "No, it is not necessary, because the hook is not used." It would [37] not be necessary for anybody to go aloft and try to clear anything, because when the boom was subsequently lowered you could clear the entanglement on the deck. It is also possible to clear it by sending a man aloft. I don't remember saying to Delquist that I would jerk it loose with the winch.

I am not doing anything right now. A great many lumber schooners are laid up at present.

Redirect Examination.

The block that was up on the other end of the mast was not used in raising and lowering these booms on that day or at any time and had no connection at all with raising and lowering these booms. When the vessel was at sea she pitched sometimes, depending on how the weather was; that has tendency to swing a block like that upon the top of the mast. When you are hoisting a load of lumber the mast shakes a little; it shakes more or less. In lowering the booms as we lowered them that day, or in raising them, sometimes parts do get tangled, but most of the time you get along without trouble lowering and hoisting them. We got the lumber aboard in sling-loads. I do not know how much a sling-load weighs; it would depend on what kind of lum-

(Testimony of S. Petterson.)

ber it was; if it was heavy lumber it might weigh a ton. They are raised from the end of the boom; a fall goes up to the mast and that causes the mast to shake, more or less.

Thereupon plaintiff rested.

Defendant thereupon called the following witnesses and offered the following testimony, to wit:

TESTIMONY OF S. SORENSON, FOR DEFENDANT.

S. SORENSON, called as witness on behalf of the defendant, was duly sworn and testified as follows: [38]

Direct Examination.

I am an able-bodied seaman, and at present am on board the "South Coast." In February, 1923, I was a sailor on board the "Crescent City" when it was lying at North Bend. I remember the occurrence when a block from the mainmast of the "Crescent City" fell and struck the forearm of Mr. Petterson, the plaintiff in this case; I was present on that occasion and saw what happened. [39]

I joined the vessel at San Francisco on her trip north from San Pedro to North Bend. We did not have any bad weather from San Francisco to North Bend; we had an average weather, not much wind or weather.

We loaded lumber at North Bend for four days. At the time of the accident the loading had been completed. After the ship was loaded we put on

(Testimony of S. Sorenson.)

the deck lashings and put on so-called turnbuckles lashing the deckload. I was a member of the group that was working with Mr. Petterson, under his direction. The sailors at that time were lowering the booms. After the booms on the forward mast had been lowered, we proceeded to lower the booms on the after mast.

Q. Did you observe Mr. Petterson using the winch on that vessel? A. Yes.

Q. At that time? A. Yes.

Q. Describe to us just what he did with the winch.

A. He went and took the levers in his hand—that is, a so-called friction winch—and when we lowered the gear Mr. Petterson was on the lever while we lowered the booms down.

Q. What did he do? Did he pull the lines up to the top, the hook up?

A. No, the hook was already there.

Q. The COURT.—What hook is that?

A. The hook between the two donkey-falls that we use to hook on the loads and bring them aboard the ship.

Q. Above the end of the boom?

A. On each end of the boom.

Q. Was this cargo hook above the end of the boom?

A. Yes, that was hooked on the midship guy. [40]

Mr. DALL.—Q. That is it was hooked on the midship guy? A. The winch-driver left it there.

Q. It was entangled with the midship guy?

(Testimony of S. Sorenson.)

A. Yes, hooked on.

Q. Was any attempt made to release that entanglement?

A. In order to unhook it, a man could go up there and walk over and unhook it.

Q. What was done on this particular occasion?

A. Mr. Petterson took the levers and he jerked it from one side to the other and it unhooked.

Q. He shook it until it unhooked?

A. Yes, from side to the other.

Q. In doing that, did he shake the mast?

A. Yes.

Mr. HUTTON.—That is leading.

Mr. DALL.—Let me ask it the other way: What effect on that mast did the running of the winch have in the attempt to jerk that line loose?

A. It shakes the mast to the same extent that it will in loading and unloading the ship.

The block came down after we started to lower the booms. After the hook is on deck we hook it in the deckload, and then there was one man on each side of the mast lowering the gear, that is, slacking on the yards; and there was one man slacking on the guys and one man taking in the slack on the midship guy. The boom was brought down to the deck so that it would lie parallel to the length of the ship. The accident occurred to Mr. Petterson when the booms were halfway down between the place where their gear was loading and unloading and the deckload. In lowering the [41] boom you do not detach the end that sets into the mast; only one

(Testimony of S. Sorenson.)

end is lowered. During my services on the vessel I had no occasion to use this block on the mast.

Q. Did Mr. Petterson say anything about the block at the time the accident happened?

A. Mr. HUTTON.—Objected to as leading.

The COURT.—That is true, but it is only preliminary; answer "Yes" or "No." A. No.

Cross-examination.

You lower the booms by the tackle and that always causes the mast to shake, just the same as when you are hoisting cargo, that causes the mast to shake at times it shakes considerably. The booms on the "Crescent City" are probably 60 feet long. Each load weighs a ton, and in hoisting a ton weight on a boom it is bound to shake the thing that it is suspended to. This goes on all the time on board ship. We were lowering the booms in the proper manner at the time the block came down, just the same as they were always in the habit of being lowered.

Redirect Examination.

Mr. Delquist was in the rigging at the time there was this entanglement in the line. I didn't hear Mr. Petterson say anything to him at that time, but I saw Mr. Delquist; he was part ways up the rigging to unhook the hook when it entangled with the amidship guy. He did not go up to untangle it; by the time he was up a couple of steps in the rigging the hook untangled by pulling from side to the other.

Recross-examination.

The captain was up in the office on the wharf; I

(Testimony of S. Sorenson.)

cannot say exactly where the mate was. I saw the mate when the captain [42] came down for the office, which was about ten or fifteen minutes after the thing happened; that is the first time I saw the mate after the thing happened.

TESTIMONY OF E. B. BUTZING, FOR DEFENDANT.

E. B. BUTZING, called as witness on behalf of the defendant, was duly sworn and testified as follows:

Direct Examination.

I am master of the "Crescent City" and was such in February, 1923, while she was lying loading at North Bend. I remember when this accident occurred to Mr. Petterson I was not on board at the time but did come on board shortly after the accident. I was only about ten minutes away from the ship. When I came aboard, Mr. Petterson picked up the block and he told me that the block came down from the masthead and struck him on his arm. This is the block to which he referred.

This block was thereupon offered and received in evidence as Defendant's Exhibit No. 8.

It is customary with a block like this to put a nosing around it. The nosing is usually made of cord or marlin or rope yarn; they very seldom put wire on it.

I can tell by looking at that particular block that there was nosing around it because it is not painted

(Testimony of E. B. Butzing.)

in the place where the nosing has been, whereas the rest of the block is painted.

This block was used in painting the mast a few months before it came down in February, 1923. It was also used for a signal halyard.

No one at any time reported to me that there was no nosing around this block. If there had been a nosing there it is possible for it to have been broken off by the severe vibration of the mast, such as would occur in loading or from the shaking of the mast with the steam winch; a heavy sea might also do it, but this does not happen very often. This mast had been in use for three or four days in loading and had been vibrating [43] during all this period. Such vibration might have affected or broken the nosing. I have never seen that happen, but it is liable to.

A block is hooked on to the band around the mast so that even if there were no nosing it would take a considerable shake to shake it out. At the time of this accident we had on board the proper material with which a nosing might have been placed on this hook. It was within the province and charge of the second mate to put such a nosing there if he saw it was missing.

Cross-examination.

That block is not the usual signal halyard block; they are much smaller sized. A piece of marlin as nosing around that block would not necessarily rot in a short time with the sun and weather; it might last a couple of years. The sun has effect on manila

(Testimony of E. B. Butzing.)

fibre the same as on anything else; marlin has tar on it also. In heavy rolling the block would roll from side to side. I am not prepared to say that it would not roll over on the marlin [44] and chafe it. I don't think the block would shake up and down unless the hook is very slack. The mast rolls considerably, when you are loading and unloading cargo.

I am sure that this particular block just introduced in evidence is the block which hit Mr. Petterson. Mr. Petterson showed it to me when I came aboard, and then I took it and put it in the locker and it has been there ever since. Everybody that goes on board the boat has access to that locker. I am sure it is the same block. I next went to the locker and looked at the block a couple of days later, when we got down to San Pedro; I left the block right there where it was; I took it out of the locker a few days ago and brought it over to this side; the boat is on the other side.

The block was on a band around the mast. I never shinned up the mast to look at it. The work that was done when it comes to repairing anything was supervised by the mate; he tells the men what to do. If the mate isn't there and the second mate is there, he has full charge of it also.

When the boat is laid up we have more time than we need to do repairs; when we are carrying lumber we don't have any except to load the lumber and unload; as soon as we get the lumber off, we start right off again; as soon as we get loaded we start

(Testimony of E. B. Butzing.)

out. It is not true that we do not repair except when we send the boat over to the shipyards; it is not necessary to repair a block at the shipyard; we repair the blocks if they get worn out at any time at any port.

The eye is fastened to the band in this way. (Witness illustrating.) The eye is riveted in the band, welded together in one piece; the eye stands perpendicularly; when the ship rolls the block would roll also; it is fastened on the side of the mast. [45]

TESTIMONY OF THOMAS SELFRIDGE, FOR DEFENDANT.

THOMAS SELFRIDGE, called as a witness on behalf of the defendant, was duly sworn and testified as follows:

Direct Examination.

I am the chief engineer of the "Crescent City" and was such in February,1923, while she was lying at North Bend. I recall the occasion on which Mr. Petterson met with an accident. After he returned from having his arm dressed, I asked him how it happened and he told me that he was running the winch and that the block fell from aloft and fell on his arm.

At the time of the injury I was in my room, which is roughly thirty feet from the after mast; I was writing a letter.

Q. Did you or did you not observe the operation of the winch at that time?

(Testimony of Thomas Selfridge.)

A. I observed that there was considerable jarring and I was surprised at it, because the cargo was all in, as I understood it, and I could not understand why there was considerable jarring of the mast at that time.

Mr. HUTTON.—His understanding hasn't anything to do with it. He can testify there was considerable jarring, but I don't think he is competent to say anything further.

Mr. DALL.—Q. The loading had been completed at the time? A. Yes.

Q. Will you describe the manner in which the winch was operating, as to the effect that it had on the vessel?

Mr. HUTTON.—I submit, your Honor please, this witness is incompetent to testify on that; he says he was in his room writing a letter.

The COURT.—If he can he may endeavor to do so; how much weight will be given to it is another question. He may answer if he can. [46]

A. Well, I may say, I would know by experience by being in my room, I am never where the winch is being worked, but I can tell by the sound, by the violence with which it is worked.

Mr. DALL.—Q. Using your experience, describe to us how the winch was being operated at the time.

A. I will say it was being worked very violently, and I might add that I heard Mr. Petterson at that time, 30 feet away swear; I heard him at that distance; he was mad at something, I don't know what.

(Testimony of Thomas Selfridge.)

Q. The vibration that you observed, was it the same or was it more than would be caused by merely taking up the slack on the line?

A. Considerably more.

Mr. HUTTON.—I object to that on the ground it is without foundation; it has not been shown that this witness has ever seen anything of that kind done before.

I had been chief engineer of this vessel at that time for a couple of months. I had spent about thirteen or fourteen years on similar vessels as chief engineer. In the course of my experience I have seen a winch operated in taking up a slack line.

Q. And basing your answer on your experience, was or was not this more than was necessary to take up the slack in the line?

Mr. HUTTON.—I object to that on the ground that he is not the man that run the winch.

The COURT.—Being an engineer, he would have some knowledge of the operation of the winch, but how much weight should be given to it is another matter. He may answer, the objection is overruled.

A. I would say very much more. [47]

Cross-examination.

I knew Mr. Petterson had been hit on the arm before he returned from the hospital getting his arm bandaged up. I knew it from common talk around the ship. I first knew it very shortly after he was hurt. Winches always make considerable clattering when they are used. They are not run very violently if a winch-driver is driving them; frequently they

(Testimony of Thomas Selfridge.)

run very violently, but frequently they have very poor winch-drivers. The mast always shakes when you are hoisting cargo; when you are hoisting cargo there is always a lot of shaking and noise and clattering going on on deck. The only way Mr. Petterson could lower the booms would be with the falls.

TESTIMONY OF S. SORENSON, FOR DEFENDANT (RECALLED).

S. SORENSON, a witness for defendant, having been previously sworn and being recalled, testified as follows:

Direct Examination.

At the time this block fell and struck Mr. Petterson, I was standing one foot behind him. At the time he operated the winch I was about a foot and a half distant from him, about as close as I could possibly get and not be in his way.

Cross-examination.

Mr. Petterson was standing with the levers of the winch in his hand when he got hit. The boom was right over his head, and that is where the block came down and hit him on the arm, and I was there taking in the slack in the guy line.

Defendant thereupon rested.

TESTIMONY OF S. PETTERSON, IN HIS OWN BEHALF (RECALLED).

S. PETTERSON, plaintiff, having been previously sworn and being recalled, testified as follows:

Direct Examination.

I paid the Morton Hospital a bill of $69.00; I paid $5.00 for rebandaging that Dr. Poheim ordered me to get; I paid out $74.00 all together. I never told the chief engineer that [48] I was running a winch when I got hit. I talked with the chief engineer after I had been up at the hospital. I told him that the block came down and hit me on my arm and broke the bone and that I had to leave the ship and got to the hospital and the chief engineer told me he felt sorry that anything like that happened.

Cross-examination.

It is not true that as the booms are lowered the donkey-falls become slack. As you lower the booms it stands there the same as if you are making the line fast here, and make it fast over there; that has no effect on these booms at all.

Q. What position was your arm in at the time you were struck? A. I had my arm on the winch.

Q. You had your hand on the lever of the winch?

A. No, on the winch.

Q. You mean on the lever of the winch, don't you?

A. I don't know if it was on the lever of the winch or if it was on top of the big cog wheels.

Q. It might have been on the lever of the winch?

(Testimony of S. Petterson.)

A. It might have been on the lever of the winch and it might have been there.

Q. That is why your arm was out in a horizontal position?

A. My arm was in a horizontal position like that when it was struck.

Q. Whether or not you had hold of the levers, you don't know?

A. No, I don't think I did have hold of the levers.

Redirect Examination.

The donkey-fall leads from the barrel of the winch into what we call the gin block at the foot of the mast, a little above the deck; that is, it goes around the winch, then it follows the [49] boom up to the end; there is another block there; then it goes right down to the boom. One end of the boom comes down to the mast; it has a band around it with an eyebolt. The rope that lowers and raises the boom is above the boom; it comes to a cleat and is made fast on a cleat. There are two ropes from the winch, one that runs up along the boom to go over the end and handle the cargo and another one that goes above to move the boom up and down. When you are through hoisting cargo the cargo hook goes up in the air and stays there; the boom stays there too, but when you are through loading and are going to leave port we always lower them down. After the booms are lowered the cargo hook lays there on the deck or on the deckload; if there is a load of lumber it lays on the lumber.

(Testimony of S. Petterson.)

Recross-examination.

The two booms are about 40 feet apart; when you swing them together and bring them down there would be a slack in the ropes, but that slack is already taken in before the booms are lowered. The band and eyebolt and block were on the mainmast about 100 feet above the deck. I never took any particular measurement of it, but should judge that it was about that; the block was about 20 feet above the falls that held the booms up.

The plaintiff thereupon rested.

TESTIMONY OF E. B. BUTZING, FOR DEFENDANT (RECALLED).

E. B. BUTZING, a witness for defendant, having been previously sworn and being recalled, testified as follows:

Direct Examination.

The block was about 65 or 70 feet from the place where Mr. Petterson was standing; he was standing on the top of the house and the mast comes down to the bottom of the ship; he was about 20 feet above the deck and this block was about 65 feet or 70 feet above him; the block is near the top of the mast; there [50] is a foot or two of the mast still higher than the block.

Cross-examination.

I don't know whether the block was originally there for wireless; the block was within a foot or two of the top of the mast. I don't know what the block was there for originally.

The foregoing is all of the evidence introduced by both sides in this case. Thereupon the following took place:

Mr. DALL.—Now, if your Honor please, in order to preserve our rights, I understand it is necessary for us to make a motion at this time that judgment be entered for the defendant on the ground that the evidence is insufficient in law to warrant a finding for the plaintiff, and on the ground particularly that it shows that the action was caused by the negligence of the plaintiff, himself. I understand such a motion is necessary in order to preserve our rights for review.

The COURT.—The motion will be taken into consideration and the whole matter determined at one and the same time.

EXCEPTION No. 3.

The foregoing constitutes all of the proceedings and all of the testimony offered and received on the trial of said action, and now within the time required by law, and the rules of this court, said defendant proposes the foregoing as and for its bill of exceptions to the ruling of the Court made during the trial of the above-entitled action and to the decision of said court, and prays that the foregoing may be signed, settled, allowed and approved as correct.

Dated: San Francisco, California, May 29th, 1924.

JONES & DALL,
C. W. DALL,
Attorneys for Defendant. [51]

It is hereby stipulated that the above and foregoing constitutes a true and correct bill of exceptions in the above-entitled action, and that the same contains all of the proceedings had and all of the testimony offered and received on the trial of said action and all of the rulings of the Court made during the trial of said action, and that the same may be signed, settled, allowed and approved as and for the bill of exceptions to such rulings and to the decision of said court herein.

Dated: San Francisco, California, June 4th, 1924.

H. W. HUTTON,
Attorney for Plaintiff.
JONES & DALL,
C. W. DALL,
Attorneys for Defendant.

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS.

I, George M. Bourquin, Unied States District Judge, being the Judge before whom the above-entitled action was tried, do hereby certify the foregoing is a true and correct bill of exceptions, and contains all of the proceedings had and all of the testimony offered and received on the trial of said action, and all rulings of the Court made during said trial; that the same has been presented in due time and is hereby signed, settled, allowed and approved as and for the engrossed bill of exceptions to the rulings of the Court made during the trial of said action and to the decision of said Court.

Dated: San Francisco, California, June 16, 1924.

GEORGE M. BOURQUIN,
United States District Judge.

[Endorsed]: Filed June 19, 1924. Walter B. Maling, Clerk. [52]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

AT LAW—No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY, a Corporation,

Defendant.

PETITION FOR WRIT OF ERROR.

Now comes Hobbs Wall & Company, a corporation, defendant in the above-entitled cause, and feeling itself aggrieved by the judgment of the above-entitled court entered therein on the first day of April, 1924, in favor of S. Petterson, plaintiff, and against said defendant, Hobbs Wall & Company, hereby petitions this Court for an order allowing it to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, under the laws of the United States in such cases made and provided.

WHEREFORE said defendant, Hobbs Wall & Company, prays that a writ of error be issued in this behalf to said Circuit Court of Appeals for the correction of the errors complained of and herewith assigned, and that citation issue as provided by law, and that an order be made fixing the amount of security to be given by plaintiff in error conditioned as the law directs, and that a transcript of the record and proceedings in this case duly authenticated may be sent to said Circuit Court of Appeals under the rules in such cases made and provided and, upon giving [53] such bond, that all other proceedings may be suspended until the determination of said writ of error by said Circuit Court of Appeals.

JONES & DALL,
C. W. DALL,
Attorneys for Defendant.

[Endorsed]: Filed June 19, 1924. Walter B. Maling, Clerk. [54]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

AT LAW.—No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY,

Defendant.

ASSIGNMENT OF ERRORS.

Now comes Hobbs Wall & Company, a corporation, defendant in the above-entitled cause, and in connection with its petition for a writ of error makes the following assignment of errors:

I.

The Court erred in admitting over the objection of defendant the testimony of R. E. Haggard, witness on behalf of the plaintiff, as to the nature of plaintiff's injury according to the test used by the Industrial Accident Commission of the State of California in cases coming within its jurisdiction, the full substance of such admitted evidence and the proceedings which were had thereon being as follows:

R. E. Haggard, called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination.

I hold with the Industrial Accident Commission the position of superintendent of permanent disability, rate department, and have been such since February, 1919. As such I am called upon to examine people who have received injuries. We have a gripping machine, called a dynamometer, for testing the [55] strength of arms and hands. The Industrial Accident Commission has a regular schedule, with supplemental rules and notes, used for fixing the percentage of permanent partial disability.

Mr. HUTTON.—Q. This man Petterson, the plaintiff in this case, has he ever been to your place to be examined, to have his arm examined by you?

Mr. DALL.—If your Honor please, we interpose the objection on the ground it is immaterial, irrelevant and incompetent. The workmen's compensation law of the State of California does not apply to this injury.

Mr. HUTTON.—I am only trying, if your Honor please, to show just the character of this man's injury from what this witness observed, in addition to what the doctor testified.

The COURT.—I will hear it. If not competent or material the Court will give it no consideration in making up its decision. The objection will be overruled for the sake of the record and an exception noted.

Mr. HUTTON.—Q. He has been to you, has he not? A. I saw him yesterday morning.

Q. You saw him before that, too, did you?

A. I have no definite recollection.

Q. What test did you put his arm and hand under yesterday, or did you put it under any test?

Mr. DALL.—One moment, may my objection be considered as going to all of this line of examination?

The COURT.—Yes, all of this character of testimony, with an exception noted.

A. I tested him out on the gripping machine, to find out what the grasp in the injured hand was in relation to the grasp and power in the uninjured hand. [56]

Mr. HUTTON.—Q. Did you find any difference in the two hands?

A. I found that on the injured hand the grasping power tested 50 pounds, in the uninjured hand 140 pounds.

Q. Did you observe the alignment of his arm?

A. I did not, no.

Q. Did you make any physical examination other than that of his hand and arm?

A. The only examination I made was with regard to the grasping power.

Q. Is that the only examination you made with the gripping machine? A. Yes.

Q. Did you make a full and careful examination of it? A. Of the arm?

Q. Yes. Did you do anything further than the test with the gripping machine? A. No.

II.

The Court erred in that it did not grant defendant's motion made at the conclusion of the trial that judgment be entered for the defendant on the ground that the evidence was insufficent in law to warrant a finding for the plaintiff, and on the ground particularly that it shows that the accident was caused by the negligence of the plaintiff himself, for the reason that plaintiff's complaint alleged that defendant was negligent in not having a nosing around the hook of the block which fell and struck plaintiff, and the burden was on plaintiff to prove such negligence, but plaintiff did not sustain such burden and did not offer any evidence to prove such negligence except the bare fact that

said block fell and struck him, whereas, on the [57] other hand, the evidence which defendant introduced showed that the hook of said block did have a nosing around it, and further that said block was caused to fall and plaintiff was injured solely as a result of plaintiff's own negligence in operating the winch too roughly and in shaking too strongly the mast to which said block was attached by a band, thereby causing the hook of said block to slip out of the eye on said band and said block to fall and injure said plaintiff.

III.

The Court erred in rendering judgment in favor of plaintiff and against defendant for the same reasons specified in paragraph II herein, that it erred in not granting defendant's motion for judgment.

WHEREFORE defendant prays that the judgment of said District Court of the United States be reversed.

JONES & DALL,
C. W. DALL,
Attorneys for Defendant.

[Endorsed]: Filed June 19, 1924. Walter B. Maling, Clerk. [58]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

AT LAW —No. 16,947.

S. PETTERSON,

Plaintiff,

vs.

HOBBS WALL & COMPANY, a Corporation,

Defendant.

ORDER ALLOWING WRIT OF ERROR.

Hobbs Wall & Company, a corporation, defendant herein, having filed herein its petition for the allowance of a writ of error, accompanied by an assignment of errors,—

NOW, THEREFORE, IT IS ORDERED: That said petition be, and the same is hereby, allowed and said writ of error granted, and that a certified transcript of the record and proceedings in this cause be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit; and

IT IS FURTHER ORDERED, that said defendant give a supersedeas bond according to law, in the sum of two thousand eight hundred fifty dollars ($2,850.00), conditioned that the plaintiff in error shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good; that upon such bond being given all further proceedings may be stayed until the de-

termination of said writ of error by said Circuit Court of Appeals.

Dated June 19, 1924.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed June 19, 1924. Walter B. Maling, Clerk. [59]

(BOND ON APPEAL.)

Premium on This Bond is $28.50 a Year.

KNOW ALL MEN BY THESE PRESENTS, That we, Hobbs Wall & Company, a corporation, as principal, and Maryland Casualty Company, a corporation, as sureties, are held and firmly bound unto S. Petterson in the full and just sum of two thousand eight hundred fifty dollars, and damages for delay, and costs and interest on appeal to be paid to the said S. Petterson, his certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of June, in the year of our Lord one thousand nine hundred and twenty-four.

WHEREAS, lately at a district Court of the United States for the Northern District of California Southern Division, in a suit depending in said court between S. Petterson, plaintiff, and Hobbs Wall & Company, a corporation, defendant, a judgment was rendered against the said defendant

and the said defendant having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiff citing and admonishing him to be and appear at a United States Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California within thirty days from the date of said citation.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said defendant Hobbs Wall & Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue. [60]

HOBBS WALL & COMPANY. (Seal)
By W. J. HOTCHKISS,
President.
By D. ELMER DYER,
Attorney-in-fact. (Seal)

Acknowledged before me the day and year first above written.

Maryland Casualty Company, a corporation, the surety herein, expressly agrees that in case of a breach of any condition of the within bond, the said Court may, upon notice to it of not less than ten days, proceed summarily in said action in which said bond is given to ascertain the amount which such surety is bound to pay on account of such

breach, and render judgment therefor against it and award execution therefor.

MARYLAND CASUALTY COMPANY,
By D. ELMER DYER, (Seal)
Attorney-in-fact.

Form of bond and sufficiency of sureties approved.

June 20th, 1924.

JOHN S. PARTRIDGE,
Judge.

[Endorsed]: Filed June 20, 1924. Walter B. Maling, Clerk. [61]

In the Southern Division of the United States District Court for the Northern District of California.

Clerk's Office.

No. 16,947.

S. PETTERSON

vs.

HOBBS WALL & COMPANY, a Corporation.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare a transcript of record and transmit such record to the United States Circuit Court of Appeals for the Ninth Circuit pursuant to a writ of error herein, including in such transcript of record the following:

1. Complaint;
2. Writ of certiorari for removal of cause from State Court;
3. Answer;
4. Stipulation waiving jury;
5. Judgment;
6. Opinion of court;
7. Stipulations extending time to file bill of exceptions;
8. Bill of exceptions;
9. Petition for writ of error;
10. Assignment of errors;
11. Order granting writ of error;
12. Bond on appeal;
13. Praecipe for transcript of record.

Dated: June 20th, 1924.

JONES & DALL,
C. W. DALL,
Attorneys for Defendant.

[Endorsed]: Filed June 20, 1924. Walter B. Maling, Clerk. [62]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing sixty-two pages, numbered from 1 to 62, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record

on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said Court, and that the same constitute the return to the annexed writs of error.

I further certify that the cost of the foregoing return to writ of error is $24.10; that said amount was paid by the defendant, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 18th day of July, A. D. 1924.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk. [63]

(WRIT OF ERROR.)

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, To the Honorable, the Judges of the District Court of the United States for the Northern District of California, Southern Division, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Hobbs Wall & Company, a Corporation, plaintiff in error, and S. Petterson, defendant in error, a manifest error hath happened, to the

great damage of the said Hobbs Wall & Company, plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, the 20th day of June, in the year of our Lord one thousand nine hundred and twenty-four.

[Seal] WALTER B. MALING,
Clerk of the United States District Court.
By C. M. Taylor,
Deputy Clerk.

Allowed by:

JOHN S. PARTRIDGE,
United States District Judge.

Receipt of a copy of the within writ of error is hereby admitted this 20th day of June, 1924.

H. W. HUTTON,
Attorney for Plaintiff.

[Endorsed]: No. 16,947. United States District Court for the Northern District of California, Southern Division. Hobbs Wall & Company, a Corporation, Plaintiff in Error, vs. S. Petterson, Defendant in Error. Writ of Error. Filed Jul. 9, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [64]

(RETURN TO WRIT OF ERROR.)

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court:

[Seal] WALTER B. MALING,
Clerk U. S. District Court.
By J. A. Schaertzer,
Deputy Clerk. [65]

(CITATION ON WRIT OF ERROR.)

UNITED STATES OF AMERICA,—ss.

The President of the United States, To S. Petterson, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Hobbs Wall & Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California, this 20th day of June, A. D. 1924.

JOHN S. PARTRIDGE,
United States District Judge.

Receipt of a copy of the within citation is hereby admitted this 20th day of June, 1924.

H. W. HUTTON,
Attorney for Plaintiff.

[Endorsed]: No. 16,947. United States District Court for the Northern District of California, Southern Division. Hobbs Wall & Company, a Corporation, Plaintiff in Error, vs. S. Petterson, Defendant in Error. Citation on Writ of Error. Filed Jul. 9, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [66]

[Endorsed]: No. 4286. United States Circuit Court of Appeals for the Ninth Circuit. Hobbs Wall & Company, a Corporation, Plaintiff in Error, vs. S. Petterson, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed July 18, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.